U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30776297

Date: MAY 29, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a pilot, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner qualifies for a national interest waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id.* While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver

petitions. *Dhanasar* states that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as a member of the professions holding an advanced degree. The record supports that determination. The remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner intends to work as a commercial airline pilot. The Petitioner initially provided the following statement describing his proposed endeavor:

> The data from [the] Federal Aviation Administration indicates that over the coming years, the commercial airline industry will be focused on managing through the aftereffects of the pandemic, with unsteady progress as the industry tries to return to a pre-pandemic environment. Some of these constraints existed even prior to the pandemic and have just been exasperated with the pandemic. Of significance is the shortage of airline transport pilots and maintenance crews for air carriers, which was already a concern even prior to the pandemic. In short, the total number of ATP [Airline Transport Pilot] licenses issued does not meet the demands of the industry, as pilot demand is expected to be about 18,000 yearly for the next ten years.
>
> While this may seem like an employer-employee type of demand, it goes beyond staffing issues, as airline[s] are forced to cancel flights as demand exceeds availability of pilots and crew, thereby impacting the airports and hubs that benefit from the flow of persons in and out of their localities. This is further hampered by disruptions in the availability of qualified applicants to fill in the position. To cut costs during the pandemic, many airlines offered their pilots early retirement plans, which combined with the difficulty to find qualified applicants has resulted in a shift for a national and international demand for qualified pilots. The time and cost requirement for training a qualified pilot is also a contributing factor that is a serious problem for both regional and mainstream airlines.
>
> My proposed endeavor will entail the transition of my European ATPL license to a FAA (Federal Aviation Administration) ATP license and for me to immediately

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

> commence work in my field of endeavor . . . . For the first 10–12 years, I will utilize my extensive experience in the field as a Captain and commanding officer to contribute to the US economy and benefit the national interest of the United States . . . .
>
> Based on my age I am able to continue my work in the field of endeavor for at least 23 more years before reaching the mandatory retirement age for pilots, which is also a substantial contributing factor in my ability to develop and advance my work in the field for the next quarter of a century.
>
> Given my extensive background and professional history, I'm also well qualified as a flight instructor to train other candidates; as I have done before. During this 5–7-year transitional period, I would be furthering my endeavor as both a pilot and flight instructor by pursuing my Active Flight Instructor Certificate (CFI). Once I have established my transition and presence as an instructor, I would be at the cusp of mandatory retirement age as a pilot and can pursue my endeavor as an instructor by building business relationships to allow me to fully transition into operating a flight school academy or more preferably working for the U.S. Government as a flight instructor.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

The Director determined that the Petitioner's endeavor to pilot commercial aircraft had substantial merit. The Director concluded, however, that the Petitioner did not sufficiently demonstrate his proposed endeavor had national importance. The Director explained that the Petitioner had not demonstrated that his endeavor would have an impact nationally. The Director added that, since the Petitioner contended that his proposed endeavor would have national importance because of a national pilot shortage, he must establish how his proposed endeavor would impact the shortage and related issues on a meaningful level nationally.

On appeal, the Petitioner reemphasizes his arguments concerning a national pilot shortage, including its impact on travel and the economy. He also submits new evidence in the form of a congressional

bill raising the pilot retirement age, articles discussing pilot shortages, and U.S. senate committee testimony about the impact of low-skilled and illegal immigration on taxpayers. While this material provides information about general airline and economic issues, it does not speak to whether the Petitioner's particular endeavor is of national importance. The Petitioner reasserts the national importance of the pilot shortage issue. However, he does not explain how his intention to fill a single position in a field of high demand would alleviate an asserted national shortage of pilots. The importance of a nationwide issue does not confer national importance on the Petitioner's proposed endeavor to work as a pilot. Again, in determining national importance within the *Dhanasar* framework, the relevant question is not the importance of the field, industry, or profession in which the individual will work, but the specific endeavor that the individual will undertake. *Id.* at 889.

The Petitioner has not demonstrated that his proposed endeavor would serve to impact the industry or field more broadly, rising to the level of having national importance. It is not clear how the Petitioners' employment as a pilot in the United States would have a positive economic impact at the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890. While the Petitioner bases the argument for the national importance on an asserted shortage of qualified pilots, we observe that shortages in a field do not demonstrate that the Petitioner's endeavor stands to have an impact on the broader field or otherwise have implications rising to the level of national importance. Further, although the Petitioner initially stated that he would train future pilots, the record does not sufficiently demonstrate that his individual training efforts would have the national impact contemplated by *Dhanasar*. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893

The record does not establish that the Petitioner's proposed endeavor is one of national importance as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.